

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY**

CYNTHIA PARLIN, Individually,)
and in her Capacities as Surviving)
Spouse of Samuel Parlin, And As)
Executrix of the Estate of Samuel)
Parlin, Deceased,)

Plaintiffs,)

v.)

C.A. No.: 08c-01-136 FSS
E-FILED

DYNCORP INTERNATIONAL,)
INCORPORATED, a Delaware)
Corporation, Parent of the co-)
defendant DYNCORP entities,)
formerly known as DI Acquisition)
Corporation;)

DYNCORP INTERNATIONAL)
LLC, a Delaware Limited Liability)
Corporation; and)
DOE ENTITIES 1-10,)

Defendants.)

Submitted: June 2, 2009
Decided: September 30, 2009

MEMORANDUM OPINION AND ORDER

On January 16, 2006, Plaintiff-Decedent, Samuel Parlin, was killed by a roadside bomb in Baghdad, Iraq. Parlin, a citizen of the State of Georgia, was employed as an international police liaison officer by non-party, DynCorp

International FZ, LLC, a Dubai company owned by Defendants, DynCorp International, Inc., and DynCorp International LLC. Defendants are Delaware corporations with principal places of business in Virginia and Texas, respectively. On January 16, while Parlin was on his way to a job interview at the direction of Defendants, an improvised explosive device detonated near his vehicle, fatally injuring him.

Before beginning work in Iraq, Parlin signed an employment agreement with DynCorp. The agreement expressly provides that it is governed by the law of the Dubai Internet City. The agreement also describes the general nature and duties of Parlin's job, and further states:

The Employee understands and accepts the fact that he . . . may be exposed to dangers due to the nature of the mission. The Employee agrees that neither Employer nor its affiliates will be liable in the event of death . . . to Employee, except as stated below. Employer will obtain . . . insurance . . . on behalf of the Employee. The Employee agrees to accept these insurance benefits as full satisfaction of any claim for death, injury or disability against Employer and its affiliates.

DynCorp, as promised, obtained a \$250,000 insurance policy for Parlin. After he was killed, Parlin's widow, Cynthia, received the policy's limits. Now, as

discussed below, Defendants contend that the employment agreement not only extinguished Parlin's survival claim, but also eliminated Cynthia Parlin's wrongful death claim.

I.

On January 16, 2008, Cynthia Parlin filed claims against Defendants under Delaware's wrongful death¹ and survival² statutes. In February 2008, the case was removed to the United States District Court for the District of Delaware. Subsequently, the District Court granted Plaintiffs' Motion for Remand, and the case returned to this court.

On November 11, 2008, Defendants moved to dismiss. As mentioned, Defendants contend that when Parlin agreed to accept the benefits in his employment agreement, he released all claims, by anyone, related to his death. Furthermore, Defendants assert that the agreement is governed by Dubai law. Oral argument was heard on March 6, 2009, and supplemental filings were called for by the court during oral argument, and by order on May 19, 2009. The parties filed supplemental briefs on June 2, 2009.

¹10 *Del. C.* §§ 3721-22, 3724-25.

²10 *Del. C.* §§ 3701, 3704.

II.

Under Superior Court Civil Rule 12(b)(6), a case may be dismissed for failure to state a claim upon which relief can be granted. The court must accept all well-pleaded allegations as true, and “[t]he test for sufficiency is . . . whether a plaintiff may recover under any reasonably conceivable set of circumstances susceptible of proof under the complaint. If [plaintiff] may recover, the motion must be denied.”³

If, on a 12(b)(6) motion to dismiss, “matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56[.]”⁴ In that instance, “all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.”⁵

In limited circumstances, however, “it may be proper for a trial court to decide a motion to dismiss by considering documents referred to in a complaint.”⁶ “The exception has been used in cases in which the document is integral to a

³*Spence v. Funk*, 396 A.2d 967, 968 (Del. 1978).

⁴Super. Ct. Civ. R. 12(b)(6).

⁵*Id.*

⁶*In re Gen. Motors (Hughes) S'holder Litig.*, 897 A.2d 162, 169 (Del. 2006).

plaintiff's claim and incorporated in the complaint[.]”⁷

Plaintiffs' claims are based upon events that took place while Parlin was working in Baghdad pursuant to his employment agreement. Because of the significant role the agreement plays in this matter, it is integral to Plaintiffs' claims and will be incorporated by reference, without converting the motion to dismiss into one for summary judgment.

In addition, under Superior Court Civil Rule 44.1, “[t]he Court, in determining foreign law, may consider any relevant material or source, including testimony, whether or not submitted by a party or admissible under the Delaware Rules of Evidence. The Court’s determination shall be treated as a ruling on a question of law.”⁸ Generally, “the movant will submit enough ‘relevant material’ to the Court to sufficiently establish the content of foreign law.”⁹

Because the foreign law issue, by definition, presents a question of law, the court’s consideration of materials regarding foreign law will not convert the motion to dismiss into one for summary judgment. Under Rule 44.1, the court may

⁷*In re Santa Fe Pac. Corp. S’holder Litig.*, 669 A.2d 59, 69 (Del. 1995).

⁸Super. Ct. Civ. R. 44.1.

⁹*Republic of Panama v. Am. Tobacco Co.*, 2006 WL 1933740, at *5 (Del. Super. June 23, 2006).

consider any relevant material, which here includes the various legal experts' submissions. As explained below, however, the decision does not turn on foreign law because the result is the same under both Delaware and Dubai law.

III.

First, Defendants argue that the “release” in Parlin’s employment agreement is valid under Dubai law, and thus, the claims “brought on behalf of Mr. Parlin must be dismissed for failure to state a claim.” Defendants contend that Parlin’s employment agreement, by its terms, is governed by Dubai law because of Paragraph 19: “[t]his Contract shall be governed by and interpreted under the laws of the Dubai Internet City.” Defendants argue that “Dubai has a ‘material relationship’ to the events underlying this lawsuit,” and that Dubai and United Arab Emirates’s overarching laws “are not ‘repugnant’ to Delaware public policy.” Defendants further claim that UAE labor law governs, and the release in Parlin’s employment agreement is valid because “the decedent’s family was compensated in excess of the statutorily required amount under the UAE Labor Law[.]”

In the alternative, Defendants contend that the release in Parlin’s employment agreement is valid under Delaware law and under the federal Defense Base Act,¹⁰ which limits certain releases. Defendants further submit that, due to the

¹⁰33 U.S.C. § 915(b).

release, Cynthia Parlin “cannot bring any actions that would be derived from the decedent’s claims . . . against Defendant based upon the wrongful death or survival statutes.”

In response, Plaintiffs assert that Cynthia Parlin was not a party to the release, and that “a claim for wrongful death is an independent action maintained for the benefit of the loved one, not the decedent, and as such cannot be released by only the decedent.” Additionally, Plaintiffs argue that “defendants have made no clear showing of the propriety of applying Dubai law,” and that no choice of law analysis is necessary because Defendants’ arguments fail under both Delaware and Dubai law.

IV.

“Delaware courts will generally honor a contractually-designated choice of law provision so long as the jurisdiction selected bears some material relationship to the transaction.”¹¹ Courts have found that a material relationship exists where a party’s principal place of business is located within the foreign jurisdiction,¹² a majority of the activity underlying the action occurred within the foreign

¹¹*J.S. Alberici Constr. Co. v. Mid-West Conveyor Co., Inc.*, 750 A.2d 518, 520 (Del. 2000); *Annan v. Wilmington Trust Co.*, 559 A.2d 1289, 1293 (Del. 1989).

¹²*Maloney-Refaie v. Bridge at Sch., Inc.*, 2008 WL 2679792, at *4 n.16 (Del. Ch. July 9, 2008); *Shadewell Grove IP, LLC v. Mrs. Fields Franchising, LLC*, 2006 WL 1375106, at *7 (Del. Ch. May 8, 2006); *Hills Stores Co. v. Bozic*, 769 A.2d 88, 112 (Del. Ch. 2000).

jurisdiction,¹³ and where parties to a contract performed most of their services in the foreign state.¹⁴ Furthermore, a foreign jurisdiction’s laws may not be used to interpret a contractual provision “in a manner repugnant to the public policy of Delaware[.]”¹⁵

Parlin’s employment agreement plainly states that Dubai law governs the contract. While Dubai arguably does not have a strong material relationship to this action—Parlin was from Georgia, Defendants are Delaware corporations, and Parlin’s employment and death were in Baghdad—Dubai’s relationship to the case is similar to Delaware’s. Regardless, as explained below, the result is the same under both Delaware and Dubai law. Thus, “the Court may resolve the dispute without a choice between the laws of the competing jurisdictions.”¹⁶

Furthermore, Defendants represent that “UAE Labor Law provides an

¹³*E.I. du Pont de Nemours & Co. v. Bayer CropScience L.P.*, 958 A.2d 245, 249 n.9 (Del. Ch. 2008).

¹⁴*Bozic*, 769 A.2d at 112. *See also Knight v. Caremark Rx, Inc.*, 2007 WL 143099, at *5 n.14 (Del. Ch. Jan. 12, 2007) (“Alabama clearly satisfies this test because the claims and counterclaims that the Settlement Agreement resolved were pending in its state courts.”).

¹⁵*J.S. Alberici Constr. Co.*, 750 A.2d at 520.

¹⁶*Lagrone v. Am. Mortell Corp.*, 2008 WL 4152677, at *5 (Del. Super. Sept. 4, 2008); *see also Berg Chilling Sys., Inc. v. Hull Corp.*, 435 F.3d 455, 462 (3d Cir. 2006) (“According to conflicts of law principles, where the laws of the two jurisdictions would produce the same result on the particular issue presented, there is a ‘false conflict,’ and the Court should avoid the choice-of-law question.”). *Cf. Travelers Indem. Co. v. Lake*, 594 A.2d 38, 47 (Del. 1991) (generally, Delaware courts use the “most significant relationship test” when a choice of law analysis is necessary).

exclusive remedy that prescribes the payment of a certain amount of damages in the event of an employee's injury or death without regard to negligence." Nevertheless, both parties' experts, notably Defendants', opined that Cynthia Parlin would be entitled to bring an action in tort under Article 282 of the Civil Code.¹⁷ Thus, it does not appear that the statutory amount of damages allowed under UAE labor law is the exclusive remedy for Cynthia Parlin.

V.

Delaware courts recognize the validity of general releases.¹⁸ "Where the release is clear and unambiguous, it only will be set aside where there is fraud, duress, coercion, or mutual mistake concerning the existence of a party's injuries."¹⁹

As presented above, the employment agreement states that Parlin "agrees that neither Employer nor its affiliates will be liable in the event of death" and that

¹⁷First Decl. of Omar Al Shaikh, at 5 ¶ H ("The waiver provision does not prevent the employee or his family from filing a claim for compensation against the employer on the grounds of negligence under the general law."); First Legal Op. of Hassan Arab, at 2-3 ("A claim could be brought by Mrs. Parlin for general compensation under the Civil Code for negligence pursuant to Article 282 of the Civil Code."); Op. of Samir A. Salloum, at 11 ("[A] claim could be brought by Mrs. Cynthia Parlin for compensation as per Article 282 of the UAE Civil Transactions Law, and in order to be eligible for compensation, Mrs. Cynthia Parlin will have to establish the negligence/default of the Defendants that caused the death of Mr. Samuel Parlin.").

¹⁸*Chakov v. Outboard Marine Corp.*, 429 A.2d 984, 985 (Del. 1981); *Cunningham v. Walter*, 1998 WL 473007, at *2 (Del. Super. April 2, 1998).

¹⁹*Edge of the Woods, Ltd. P'ship v. Wilmington Sav. Fund Soc'y, FSB*, 2000 WL 305448, at *4 (Del. Super. Feb. 7, 2000).

“[t]he Employee agrees to accept [the] insurance benefits as full satisfaction of any claim for death . . . against Employer and its affiliates.” It appears that Parlin clearly and unambiguously waived his claims, and there are no allegations of fraud, duress, coercion, or mistake. Thus, the release is valid under Delaware law.

Additionally, based upon the declaration of Omar Al Shaikh, a Dubai attorney specializing in UAE labor law:

[I]n order for [the general release] to be valid where an employee has died as a result of an accident at work[,] the employer is required to pay the employee’s family (as defined in Article 149) a one time lump sum payment equal to his basic remuneration for 24 months, provided that the amount of the compensation is not less than AED 18,000 (USD \$4,904.63) nor greater than AED 35,000 (USD \$9,536.78).²⁰

Al Shaikh further opines that “the maximum amount is the most the employer would be statutorily required to pay under the UAE Labor Law. However[,] the law does not prevent an employer from paying more than AED 35,000.”²¹

For the release to be valid, the statutory amount owed to Parlin’s family was approximately USD \$86,627.28, which could be paid under an insurance

²⁰First Decl. of Omar Al Shaikh, at 4 ¶ F.

²¹*Id.*

policy.²² Cynthia Parlin received \$250,000.00 from the insurance policy issued on Parlin's behalf. Because this amount exceeded \$86,627.28, the release appears valid.

Furthermore, Hassan Arab, partner of a Dubai law firm, opined that the release is valid not only under UAE labor law, but also under the Civil Code. Article 296 of the Civil Code states that "[a]ny condition purporting to provide exemption from liability for a harmful act shall be void."²³ The release nevertheless appears valid, even under Article 296, because Parlin's employment agreement did not purport to provide an exemption from liability. Rather, it merely provided an insurance policy in lieu of Parlin's right to sue his employer for his death or injury.

Finally, Defendants contend that "the general release contained in Mr. Parlin's employment agreement is valid under the Defense Base Act." Thirty-three U.S.C. § 915(b) provides: "[n]o agreement by an employee to waive his right to compensation under this chapter shall be valid."

Parlin's employment agreement was not, however, a waiver of compensation under the Defense Base Act. The release did not require forfeiture of Defense Base Act benefits.²⁴ Instead, the release was simply a waiver of his right to

²²*Id.* at 4-5 ¶ G.

²³First Decl. of Charles S. Laubach, at 5 ¶ 12.

²⁴It is suggested that Parlin's family receives benefits under the Act.

sue Defendants in exchange for insurance benefits. Therefore, even under the Defense Base Act, Parlin's release is valid. Assuming the release is enforceable, the dispositive issue is whether it barred Parlin's estate's survival claim or Cynthia Parlin's wrongful death claim.

VI.

A. Survival Claim

Under Delaware's survival statute, a decedent's estate has a cause of action against a defendant for "the prosecution of claims on behalf of [the] deceased."²⁵ "A survival action, filed by the personal representative of the estate, recovers any damage sustained by the decedent between the injury and his/her death, for which the decedent could have recovered had he/she lived."²⁶ Recoverable damages under the statute are "pain and suffering from the time of injury to the time of death, expenses incurred in endeavoring to be cured of such injuries and loss of

²⁵*Pipher v. Burr*, 1998 WL 110135, at *2 (Del. Super. Jan. 29, 1998); 10 *Del. C.* § 3701.

²⁶*Franz v. U.S.*, 791 F. Supp. 445, 448 (D. Del. 1992). *See also Bennett v. Andree*, 252 A.2d 100, 103 (Del. 1969) (holding that "an administratrix has the same cause of action the deceased had prior to [his] death"); *Coulson v. Shirks Motor Express Corp.*, 107 A.2d 922, 925 (Del. 1954) ("The result of this amendment has not been the creation of a new cause of action, but rather the continuance in the executor or administrator of a deceased of the same right of action which accrued to the deceased during his lifetime because of the negligent act of the defendant.").

earnings resulting from such injuries from time of injury to time of death.”²⁷

By signing the employment agreement containing the release, Parlin waived his estate’s survival claim. As mentioned, the agreement stated that Parlin “agree[d] to accept [the] insurance benefits as full satisfaction of any claim for death . . . against Employer and its affiliates.” Because Parlin waived his right to sue Defendants for his injuries and death, his estate is barred from pursuing the survival claim.

B. Wrongful Death Claim

As explained above, Parlin’s release knocks out his survival claim. That holding, however, leaves open the question of whether Parlin’s release also knocks out Cynthia Parlin’s claim, as next-of-kin, for relief under Delaware’s wrongful death statute. Whether Cynthia Parlin has a wrongful death claim turns on how Delaware law treats the deceased’s putative release of her statutory claim. That is an open question.

Defendants’ argument begins with a truism: wrongful death claims are “derivative.” From that, Defendants conclude in bootstrap fashion that because Parlin signed a release knocking out his own tort claim against Defendants, *ipso facto* the release knocked out his next-of-kin’s “derivative” claim. In other words, Defendants

²⁷*Pipher*, 1998 WL 110135, at *3.

say that if, for any reason, Parlin cannot sue them for his death, no one else can. Now, the court will consider the implications of a wrongful death claim's derivative nature in this case's context.

Delaware courts have repeatedly held that if a decedent's estate fails to sue the tortfeasor before the statute of limitations has run, any wrongful death claim is also time barred. *Drake v. St. Francis Hospital*²⁸ holds that "the statutory right of action created by the Delaware wrongful death statute has *always* been a separate and different right of action than that held by the deceased. Nevertheless, in this jurisdiction, it has been 'held subject to the same [infirmities] as would have existed in a suit by the deceased if still alive.'"²⁹ *Drake*, as well as *Reyes v. Kent General Hospital*,³⁰ and *Milford Memorial Hospital, Inc. v. Elliott*,³¹ hold that wrongful death claims are barred if decedent allowed the statute of limitations to lapse before dying.

²⁸560 A.2d 1059 (Del. 1989).

²⁹*Id.* at 1062. See also *Reyes v. Kent Gen. Hosp., Inc.*, 487 A.2d 1142, 1146 (Del. 1984); *Milford Mem'l Hosp., Inc. v. Elliott*, 210 A.2d 858, 860 (Del. 1965). See also *Lovett v. Cheney*, 2007 WL 687228, at *3 (Del. Super. March 2, 2007), *aff'd*, 2008 WL 4483736 (Del. Supr. Oct. 7, 2008) (holding that, because decedent's remedies were limited to the Workers' Compensation Act, his estate could not maintain a tort action against his employer); *Young v. Allstate Ins. Co.*, 1990 WL 63959, at *2-3 (Del. Super. Feb. 26, 1990) (holding that wrongful death claims were barred because an exclusion in decedent's insurance policy would stand as an infirmity to decedent had he survived and filed suit).

³⁰487 A.2d at 1145-46.

³¹210 A.2d at 860-61.

Defendants read too much into *Drake* and its progeny. The *Drake* line of cases stands for the proposition that, as to wrongful death claims, the statute of limitations on a decedent's claim works as a statute of repose, not only extinguishing decedent's primary claim, but also any derivative claim. The subtext to *Drake* is the concern that the derivative claimants are not given special treatment, such as extra time in which to file suit.

In contrast to the *Drake* line of cases, *Jones v. Elliott*³² holds that, where a husband unilaterally releases his primary personal injury claim following a motor vehicle accident, his wife is not bound by the release and may still pursue a loss of consortium claim.³³ While *Jones* was not a wrongful death case, loss of consortium claims, like wrongful death claims, are derivative.³⁴ *Jones* explains:

The husband is the holder of the primary cause of action for physical injury against the tortfeasor, and thus only he can extinguish his right to such claim. On the other hand, the wife is the holder of the derivative claim for loss of consortium. This is a claim for a separate and distinct injury resulting from the physical injury to the husband and

³²551 A.2d 62 (Del. 1988).

³³*Id.* at 63, 65. *Cf. Sobolewski v. German*, 127 A. 49, 52 (Del. Super. 1924) (holding that “[i]t being apparent that no action based on loss of consortium or damage to property could have been brought by the deceased, consequently, no such action can be maintained by the wife”).

³⁴*See, e.g., Bejger v. Shreeve*, 1997 WL 524057, at *3 (Del. Super. April 15, 1997); *Thompson v. DuPont De Nemours, Rockford Ctr.*, 1991 WL 166122, at *1 (Del. Super. July 31, 1991).

may be maintained independently, if, as occurred here, the spouse having the direct claim has unilaterally foreclosed the opportunity to assert the consortium claim.³⁵

Of course, “the physically injured spouse must have a valid claim in order for the loss of consortium claim to spring into existence.”³⁶

After *Jones*, in *Spadaro v. Abex Corporation*,³⁷ this court dealt with an issue similar to the one at hand. *Spadaro* involved wrongful death actions filed by a decedent’s wife and two sons. Before his death, decedent and his spouse signed a release on their behalf and on behalf of their “heirs, executors, administrators, successors and assigns” that waived all claims against defendants.³⁸ While the court dismissed the spouse’s wrongful death claim, *Spadaro* held that “since [the sons] had the power to contract for themselves, their parents did not have the power to contract for them.”³⁹ Thus, because the sons did not sign the waiver, the court denied summary judgement for defendants on the sons’ wrongful death claims. *Spadaro* explains:

³⁵*Jones*, 551 A.2d at 65.

³⁶*Id.* at 64.

³⁷1993 WL 603378 (Del. Super. Sept. 9, 1993).

³⁸*Id.* at *1.

³⁹*Id.* at *2.

In Delaware, a wrongful death action is maintained for the benefit of the loved ones of the decedent and not for the benefit of the estate. Therefore, although a wrongful death claim is a derivative claim, this does not mean that a release of the underlying claim automatically releases the tortfeasor from wrongful death and loss of consortium claims.⁴⁰

In the instant case, while Parlin signed the employment agreement containing the release, the agreement does not purport to release any claims besides Parlin's. More importantly, Cynthia Parlin did not sign the agreement or a release. The sense of justice⁴¹ that saved the loss of consortium claim in *Jones* is at least as compelling in the wrongful death context. If a husband cannot unilaterally extinguish his wife's loss of consortium claim, he should not be able to unilaterally extinguish his next-of-kin's wrongful death claim.

As *Jones* explains, “[t]here is a difference between the right to extinguish a primary cause of action and the right to extinguish a derivative cause of action.”⁴² A release, signed only by the decedent and that fails to reference decedent's heirs, is

⁴⁰*Id.* at *1. Cf. *Perry v. Philadelphia, B. & W. R. Co.*, 77 A. 725, 735 (Del. Super. 1910) (holding that “such right of action is dependent upon the right of the party injured, had he not died in consequence of his injuries, to maintain his action for personal injuries”); *but see Spadaro v. Abex Corp.*, 1994 WL 713840, at *1 (Del. Super. July 20, 1994) (“The *Perry* case, however, was decided under a prior version of the wrongful death act[.]”).

⁴¹*Jones*, 551 A.2d at 65 (“[J]ustice requires that the wife's claim not be foreclosed by the husband's unilateral action.”).

⁴²*Id.*

not the type of “infirmity” spoken of by the courts in these cases, such as the tolling of the statute of limitations.

It is one thing for the victim of a tort to choose not to sue the tortfeasor, as in *Drake, et al.*, or for Parlin to have agreed with Defendants to waive his claims in return for insurance, as he did. It is something else for Defendants to send Parlin into a war zone without obtaining a waiver from his next-of-kin. The court cannot identify a legitimate reason why Parlin was inherently vested with authority to waive anyone else’s rights besides his own. The fact that the family’s claim is “derivative” only means that it begins with and flows from an actual tort against the deceased. Therefore, the waiver here simply extinguishes Parlin’s claim. It does not vaporize Defendants’ allegedly tortious behavior. Absent their victims’ waivers, Defendants must answer to those whom Defendants have wronged. In short, Parlin’s general release did not extinguish his family’s wrongful death claim.

Of course, Plaintiffs will have to prove liability to recover.⁴³ After discovery, Defendants have leave to move for summary judgment if they can show, viewing the evidence in the proper light, that even if Parlin had not signed a release, he still could not have recovered in tort. Defendants contend that “under Delaware

⁴³*Id.*

law, Mr. Parlin’s primary assumption of the risk ‘constitute[s] a complete bar to recovery, as a matter of law, even in a comparative negligence jurisdiction[,]’ such as Delaware.”⁴⁴ At this early stage, however, this issue is not ripe.

C. Dubai Law and UAE Civil Code

Finally, based upon the court’s limited knowledge of Dubai and UAE law, and the contradictory expert opinions submitted by the parties, it appears that under Dubai law, the release does not apply to Cynthia Parlin. Simply put, she did not sign the release and the release contains no reference to Parlin’s heirs. Even under the UAE Civil Code, nothing indicates that the release extended to Parlin’s widow or any other family member.⁴⁵

Regardless, the applicability of Dubai or UAE law to the wrongful death claim is not dispositive, as the wrongful death claim arises through Delaware law. In other words, the validity of a release of claims under Delaware’s wrongful death statute presents a question of Delaware law.

⁴⁴*See Spencer v. Wal-Mart Stores East, LP*, 930 A.2d 881, 885-86 (Del. 2007).

⁴⁵UAE Civil Code Art. 250 (quoted in Second Legal Op. of Hassan Arab, at 9) (“The effects of the contract shall extend to the contracting parties and their general successors . . . unless it appears from the contract or from the nature of the transaction or from the provisions of the law that the effects were not to extend to a general successor.”); *cf.* Art. 252 (quoted in Op. of Samir A. Salloum, at 14) (“a contract shall not impose an obligation upon a third party but may create a right in his favor”).

In sum, under Delaware and Dubai law, the release in Parlin's employment agreement is valid. Thus, his estate's survival claim is extinguished. Cynthia Parlin's wrongful death claim, however, is not barred because Parlin's unilateral release did not extend to his widow's claim.

VII.

For the foregoing reasons, Defendants' Motion to Dismiss is **GRANTED** as to the deceased's survival claim, and **DENIED** as to Cynthia Parlin's wrongful death claim.

IT IS SO ORDERED.

/s/ Fred S. Silverman
Judge

oc: Prothonotary
pc: Robert K. Beste, Esquire (VIA E-Filed)
Ben T. Castle, Esquire (VIA E-Filed)
Nelli M. Walsh, Esquire (VIA E-Filed)
